IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

CRP.No. 963 of 2004()

AGAINST THE ORDER IN IA.720/03 IN CMA.12/03 of SUB COURT,CHERTHALA
IA 3023/01 in O.S.396/97 on the file of the Munsiff's Court, Cherthala.

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REVN. PETITIONERS:

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1. SIVANANDAN, S/O.KRISHNAN,
KALIYATHUKATTU, PERUMPALAM VILLAGE,
PERUMPALAM MURI, CHERTHALA TALUK.

2. RATHNAVALLY, D/O.KRISHNAN,
NOW RESIDING AT CHIRATTAPARAMBIL,
KUDAVECHOOR MURI, VECHOOR VILLAGE,
VAIKOM TALUK.

BY ADV. SRI.JOBY CRRIAC

RESPONDENTS:

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1. THANKAPPAN, S/O.VELU,
KIZHAKKE KALIYATHUKATTIL, PERUMPALAM VILLAGE,
PERUMPALAM MURI, CHERTHALA TALUK.

2. VELAYUDHAN, S/O.KRISHNAN,
RESIDING AT DO. DO.

BY ADV. SRI.D.PREM KAMATH

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 07/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.Krishnan, J.

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C.R.P.No.963 of 2004

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Dated this the 7th day of September, 2007.

ORDER

This revision is preferred against the order of the Subordinate Judge, Cherthala in I.A.No.720 of 2003 in C.M.A. No.12 of 2003 whereby the said court declined to condone the delay of 217 days in filing the appeal and also as a corollary, dismissed the C.M.A. The delay is 217 days. The court below found that there was no evidence to prove the alleged Asthma and that he had not informed the Advocate.

2. Now learned counsel for the revision petitioner submits before me that the petitioner is not only suffering from Asthma, but he was also undergoing treatment for tuberculosis and there are documents to prove the same. The ailment is that of the first respondent. The second plaintiff is the sister. Ordinarily under the Indian conditions, it is the male, who takes main interest in the contest of litigation. Therefore, if there is real ailment which deprived the first appellant from filing the appeal in time, it is a

matter that has to be considered.

3. Broad principle of natural justice always demands that an opportunity should be given to the parties to prosecute the case on merits unless it is vitiated by gross negligence or grave misconduct. Bearing this principle in mind, I set aside the orders passed in the I.A. as well as in the C.M.A. and direct the Subordinate Court, Cherthala to restore the C.M.A. as well as I.A.No.720 of 2003 and then give an opportunity to both sides to produce documents and adduce evidence in support of their respective contentions and thereafter dispose of the matter on merits.

Civil Revision Petition is disposed of as above. Parties are directed to appear before the court below on 22.10.2007.

M.N.Krishnan,
Judge.

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